FROM NO. 21

(SEE RULE 102(1))

ARMED FORCES TRIBUNAL , KOLKATA BENCH

APPLICATION NO : O. A 112 OF 2012

ON THIS 25TH DAY OF MARCH, 2014

CORAM : HON'BLE MR.JUSTICE RAGHUNATH RAY , MEMBER (JUDICIAL)

HON'BLE LT GEN KPD SAMANTA, MEMBER (ADMINISTRATIVE)

Havildar V Chiranjeevi

613, TPT Company ASC Type (A)

Fort William,

Kolkata-700 021

……Applicant

-VS-

1. The Union of India, through the
   Secretary, Ministry of Defence,

   New Delhi- 110 011.

2. The Chief of Army Staff,
   Through the Adjutant General (ADGPS)

   Army Headquarters,

   New Delhi – 110011.

3. The OIC Records, ASC Records
   Bangalore-560 007

…. …. Respondents.

For the Petitioner: Mr. S.K.Chaudhuri, Advocate

For the Respondents: Mr. Mintu Kumar Goswami, Advocate.

O R D E R

PER HON'BLE LT GEN KPD SAMANTA, MEMBER (A)

Being aggrieved by the decision of the respondents in not extending his service by two years, the applicant, who was a Havildar in 613 Tpt Company, ASC, Fort William, has filed this application praying for quashing of the impugned order dated 12.09.2011 by which he was discharged from service on completion of existing term of engagement.

2. Briefly, the facts of the case are that the applicant was enrolled in the Army on 19.10.1988. According to his term of engagement in the rank of Havildar he could serve up to 24 years of total service that is extendable by two years subject to being found fit as per a screening board that he is subjected to. As per his initial terms of engagement of 24 years his term was to expire on 31.10.2012. During the course of his service, he was downgraded to a low medical category of P2 (Temp) for developing a disability of '*Lumber Spondylosis'* with effect from 26.10.1995. On review, he was placed in permanent Low Medical Category (LMC) P2 with effect from 26.10.1996. He remained in that medical category till 28.05.2011. A further review of his medical condition was made on 28th May, 2011, and his category remained the same i.e. P2 permanent.

3. Consequent to the implementation of the 5th Central Pay Commission (CPC) awards, the service of all central government employees was extended by two years. Accordingly,

the respondent authorities also issued circulars in the year 1998 whereby the service of all army personnel was also extended by two years. However, for the other ranks and junior commissioned officers such extension was subject to fulfilling certain conditions of acceptable criteria regarding medical category and discipline etc. A policy letter was issued on 21.09.1998, as per which the procedure for screening of personnel below officer rank (PBOR) for extension of service by two years was notified. Although, as per the ibid circular of 21.09.1998 (Annexure A1-Colly), the acceptable medical category was AYE, which is same as S1H1A1P1E1; it is further explained that the screening board, which as per ibid rules is held two years prior to the date when the person completes his initial period of engagement, would screen all such employees including those who are in temporary/permanent LMC for assessing their fitness for extension of service by two years beyond the initial period of engagement. It is also provided that those who are in permanent low medical category will also be screened subject to the condition that their medical category ought to be upgraded to the acceptable level i.e. 'AYE' before expiry of initial period of engagement, which is the normal tenure. The applicant claims that he was accordingly screened and granted extension for two years from 19.10.2012 to 18.10.2014 vide Screening Board dated 02.10.2010. At that point of time the applicant was in permanent LMC (P2 permanent) as already stated above. Subsequent to the screening board held on 02.10.2010 for extension of service, the applicant was put through a review Medical Board on 28.05.2011 but his medical category could not be upgraded. In such circumstances, the applicant was discharged from service by an order dated 12.09.2011 on completion of his initial term of engagement i.e. with effect from 31.10.2012. Being aggrieved by such early discharge notwithstanding his extension of service from 19.10.2012 to 18.10.2014, as granted by the Screening Board held on 02.10.2010, the applicant has filed this application inter alia challenging his discharge order being contrary to the policy letter dated 20.09.2010 Annexure A1 colly. Page 39 of the OA) and has prayed for a direction upon the respondents

to grant him extension of service for the period from 31.10.2012 to 31.10.2014 in terms of the revised policy letter dated 20.09.2010 under which even P2 category persons are eligible for extension. He has also prayed for a direction upon the respondents to condone 28 days deficiency of 24 years of service in order to be eligible for grant of MACP and consequential enhanced pensionary benefits.

4. The respondents have contested the application by filing a A/O. They have not disputed the facts stated above but their contention is that the revised policy dated 20.09.2010 is not applicable in the case of the applicant because it is to be effective from 01.04.2011 by which date the applicant had already completed his tenure of 24 years of service and his medical category was not upgraded. Hence there was no other option than to discharge him as per the extant rules. It is clarified that the Ministry of Defence policy letter dated 21.09.1998 would remain applicable in respect of persons who were due to be discharged from service till 31.03.2013 and the revised policy letter dated 20.09.2010 would be applicable to the persons who were due for discharge from service on or after 01.04.2013. Accordingly, the applicant cannot claim any benefit of the revised circular of 20.09.2010 because his due date of discharge, as per his original term of service, was prior to 31.03.2013 i.e. 31.10.2012.

5. We have heard the ld. counsel for both sides at length. Major Gen.(Retd.) S. K. Choudhury, ld. advocate led by Major K. Ramesh, ld. advocate appearing for the applicant has very vehemently argued that the applicant has been discriminated against in the matter of grant of extension. It is submitted that it was well-known to the respondents that the applicant was in permanent LMC since 1996 and in that condition he continued in service without any difficulty. He has also submitted that as per policy letter dated 10.10.1997 (Annexur 1 Colly) even a LMC person (BEE) is eligible for promotion. His contention is that if LMC personnel can be promoted, there is no good reason for denying extension in the same

post to such a person and since the applicant was in P2, he ought to have been granted extension. Major Ramesh, the ld advocate for the applicant further argued that the purpose of issuance of a revised policy letter on 20.09.2010 was in effect to remove this anomaly of having a medical criteria which is more strict for extension but lenient for promotion. Because of such rationale the authorities have in fact equated the promotion medical criteria with that for extension of service as well. But the respondents arbitrarily and illegally discharged him in spite of the fact that he was already screened and granted extension of service by two years from 19.10.2012 to 18.10.2014.

6. His further contention is the latest policy 20.09.2010 clearly stipulates that persons placed in medical category BEE, both temporary and permanent, who are eligible for promotion, will also be eligible for extension in service whereas the earlier policy of 21.09.1998 says that the individual must continue to remain in medical category 'AYE". Thus, there is a clear case of discrimination between the same classes of persons, which have no nexus with the object. On one hand, those who are governed by the earlier policy, they will have to be in 'AYE' medical category but those who will be governed by the subsequent policy letter, even BEE category can have extension of service. In this connection, ld. adv. for the applicant has relied on the decision of the Hon'ble Supreme Court in the case of **Union of India & Anr –vs- SPS Vanis (Retd) & Ors,** (2008) 9 SCC 125.

7. His other contention is that the policy letter dated 20.09.2010 cannot be made effective from a prospective date of 01.04.2011. It is submitted by the ld. adv. that it is common knowledge that any order is to take effect from the date of its issue and not from a prospective date. Moreover, any beneficial order cannot be restricted for a particular group of employees while denying the same benefit to another group who are in service on the date of issue of such beneficial order and have fulfilled all other eligibility criteria. He, therefore, submits that in the peculiar facts of the case, such order should be given

retrospective effect to allow the benefit to be admissible to all similarly placed persons. On this point, he has referred to the decisions of Hon'ble Supreme Court reported in AIR 1977 SC 451 (**Govt. of A.P. & Ors –vs- Sri D. Janardhana Rao & Anr**) and AIR 1991 SC 76 (**Shesrao Jangluji Bagde-vs- Bhaiyya s/o Govindrao Karle**) and **M Venkateswarlu & Ors –vs- Govt. of AP**, (1996) 5 SCC 167. He has also referred to an unreported decision of the Principal Bench of AFT in OA 513 of 2011 decided on 4.4.12 (Nb Sub Gulab Rao –vs- UOI) where in a similar situation; the applicant therein was allowed extension of service in terms of the circular of 20.09.2010.

8. Per contra, Ld. Counsel for the respondents, Mr. Mintu Kumar Goswami, apart from his oral submission, has also submitted written notes of argument. He has contended that the medical criteria has been clearly mentioned in the 21.09.1998 circular that a LMC person has to be upgraded before completion of his normal tenure in order to get the extension. As per the said policy the applicant was also screened and recommendation for extension of service was made subject to his up gradation before completion of his tenure but unfortunately he could not be upgraded and, therefore, the respondents have correctly discharged him from service in accordance with the extant policy. It is further clarified that the policy of 20.09.2010 has been made effective for persons who were due to discharge after 01.04.2013, the same being applicable from 01.04.2011. It is true that the said circular was issued earlier but in view of clear stipulation in the said circular regarding date of effect, the applicant cannot inure any benefit of that circular. He has also submitted that identical questions were raised before the Principal Bench, Lucknow Bench and Kochi Bench of the AFT and the validity and legality of the circular dated 20.09.2011 has been upheld.

9. In his written argument, ld. adv. for the respondents has also referred to some decisions, viz. **Brij Mohan Lal –vs- UOI & Ors**, (2012) 6 SCC to contend that court or Tribunal cannot interfere with a policy decision and further that mere legitimate expectation of an

individual cannot be a ground for interference. By referring to another decision of the Hon'ble Apex Court reported in (2012) 2 SCC 773 (**West Uttar Pradesh Sugar Mills Association –vs- State of UP etc. etc. etc.** it is contended that a coordinate Bench cannot take a different view independently and in case of any difference of opinion, the matter has to be referred to larger Bench. His argument is that since the Lucknow Bench of AFT has already decided the issue which was also followed by the Kochi Bench of AFT, this Bench of AFT cannot take a different view. Therefore, the applicant has no case and the application is liable to be dismissed. He has also referred to two unreported decisions of Hon'ble Guwahati High Court in the case of **UOI –vs- Amir Chand Pathania** (dt. 26.4.12), and in **Jushim Uddinmajumdar –vs- UOI** (dt. 24.8.06).

10. We have given our thoughtful consideration to the rival contentions. Admittedly, the applicant was originally due to complete his service span on 31.10.2011 as per his initial term of engagement. Service of all categories of employees was extended in terms of the Fifth Pay Commission recommendations. However, in the Indian Army such recommendation was accepted with certain conditions which are absolutely necessary because all persons including those in LMC cannot be given extension to the detriment of the interest of the organization. Therefore, certain embargo has been laid down in the policy letter of 21.09.1998 (Annexure A1 Colly, Page 26 of the OA). As per this policy, the procedure and criteria for screening for grant of extension by two years have been laid down. The medical standard as stipulated in the said circular is that individual must continue to remain in medical category 'AYE'. However, so far as screening is concerned, it has been clearly mentioned in para 2(b) (ii) of the ibid circular as follows:

> " (ii) The screening board would screen permanent low medical category PBOR with a view to assess their suitability for retention up to enhanced service of age limit, provided there is ample opportunity for upgradation of their medical category by the subsequent re-categorisation medical board before commencement of the enhanced service limit. The screening board can declare them fit conditionally by

adding a clause in their case "subject to his medical category being upgraded to the acceptable level before expiry of his normal tenure". If they are not assessed fit by the screening board, they will be disposed off in the normal manner and will not be given the benefit of enhanced service limit."

11. This circular also mentions that screening has to be done 24 months prior to their reaching the current laid down service limit. It will be useful to quote the relevant provisions as follows:-

" 4. Method of screening. Screening of the affected PBOR for the grant of extension **should be carried out 24 months prior to their reaching the current laid down service limits**. It should be conducted by the same boards which are constituted and assembled for the purpose of deciding promotions for the same rank as per current practice in various Arms and Services. Accordingly unit/regiment/corps promotion boards, besides deciding the promotion should also undertake the following additional tasks, whenever required:-

(a) Screen affected PBOR for the grant of extension.

(b) Consider PBOR for continued retention during the extended tenure.

(c) Consider Ris Maj/Sub Maj who do not complete 32 years pensionable service of 4 years tenure by the time they reach 50 years of age for screening for extension in service upto the age of 52 years of age or 32 years of pensionable service or 4 years of tenure whichever is earlier."

12. In accordance with this procedure the applicant was also screened on 02.10.2010 i.e. two years prior to his discharge according to the existing terms of service because he was to retire on 31.10.2012. At that point of time, admittedly, the applicant was in permanent medical category P2 (BEE). However, as per the laid down policy even permanent LMC personnel is to be screened provided that there is ample scope for up-gradation before commencement of the enhanced service limit. The next Medical Board of the applicant was

due on 28.05.2011. Therefore, he was screened as per rules and was provisionally granted extension. Even in the Medical Board that was held on 28.05.2011 the applicant could not unfortunately be upgraded to medical category AYE. In such circumstances, according to the policy, the applicant was not entitled to get extension and accordingly he was discharged.

13. The revised policy of 20.09.2011 was made applicable with effect from 01.04.2011 to enable dissemination of all concerned. As per this circular also the screening has to be carried out 24 months prior to the reaching the current laid down service limit. According to the medical classification, the medical criteria for extension of service have been made the same as applicable for promotion in terms of circular dated 10.10.1997. Thus, it appears that there was relaxation of medical classification in the latest circular from AYE to BEE. The applicant's contention is that had this circular been applicable to his case, he being in P2 medical category, which is acceptable medical category for promotion, he would have got the benefit of extension. However, it has been laid down that screening should be done only once. The applicant had already been screened on 2.10.10.and he could not be screened for the second time since the rules set out in the ibid policy letters did not permit..

14. We have carefully considered the contention raised by the ld. adv. for the applicant on the question of discrimination. The decision in **SPS Vanis's** case (supra), as relied on by the ld. adv. for the applicant, does not appear to be applicable. In that case there was discrimination in the matter of pay/pension fixation between pre-1.1.96 and post 1.1.96 retirees and in that context, relying on **D.S.Nakara**'s case, which was pat on the point at issue; it was held that such discrimination cannot be permissible. However, in the instant case, the facts are quite different. Here, the question relates to extension of service for which medical classification has been laid down in the policy letters. The policy letter of 20.9.10 which the applicant wants to be applied in his case by way of giving it retrospective effect because of liberal medical classification provided in it was already the subject matter

of dispute before the Lucknow Bench of the AFT in a group of cases led by Sub Brajesh Kumar Shukla (OA 234/2010). There, the legality and validity of the circular dt. 20.9.10 so far its prospective effect was concerned, was challenged. It will be useful to quote the following paragraphs from the judgement (unreported) of the Lucknow Bench dt. 15.2.12:-

> "36. We also find that choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is assigned for the said choice unless it is shown to be blatantly capricious of whimsical. It is also a settled legal proposition that policy decision adopted by the authorities/instrumentalities is beyond the purview of judicial review unless the same is found to be arbitrary, unreasonable or in contravention of any statutory provisions or violates the rights of individual guaranteed under the statute. The Court cannot be justified in striking down a policy decision taken by the State merely if it feels that another decision would have been better and beneficial.
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> 37. Thus what is clearly decipherable is that policy decision should not lightly be interfered with by the Courts unless it is found to be arbitrary, discriminatory, unreasonable or violative of any provision of the Constitution of India or any statute. In this connection while considering the policy in question we do not find any element or unreasonableness, arbitrariness or irrationality. The purpose of fixing particular date under the said policy has amply been explained in the Counter Affidavit and nothing adverse emerges out from the said narration. The policy does not intentionally tend to deprive a section of persons of a particular benefit. It has been issued after keeping in mind the interest of the organization as a whole. We are also satisfied that there is no element which may be said to offend the provisions of Article 14 of the Constitution of India.
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> 38. In view of what has been discussed herein above we find that the policy in question does not deserve to be interfered with and the 'cut-off date' which has been fixed is neither arbitrary nor unreasonable nor whimsical and not wide off the mark as such the same does not deserve to be set aside. We, even otherwise do not find any ground for interference. The bunch of Original Applications being devoid of merits thus deserves to be dismissed."

15. It is true that an order takes effect from the date of its issue unless the rule making authority clearly spell out in the rule or order itself that the same will take effect retrospectively or prospectively. The ratio and substance of the three decisions of the Hon'ble Supreme Court in **D.Janaradhana Rao** (supra), **I Sheshrao's** (supra) and **M**

Venkateswarlu & Ors –vs- Govt. of AP (supra) relied on by the ld. adv. for the applicant are not relevant to the present set of facts in this case. All the aforesaid decisions are on the same facts, where the question was relaxation by the Governor in respect of certain promotion rule. In the instant case, the policy of 20.9.10 does not provide any relaxation clause. Moreover, the facts of the cited cases are totally different and distinguishable. Therefore, those decisions are not applicable in the instant case.

16. In the other case of Principal Bench of AFT in **Nb Sub Gulab Rao**'s case (supra), relied on by the ld. adv. for the applicant, we find in Para 26 where it has been stated as below:-

> " 26. ….. In this case the applicable would have been screened in December 2010 since he was due to retire under normal circumstances in December/January 2012. Since his name did not figure in the letter of 4.1.2011. It implies that his screening was done and since at that point of time he was within acceptable category i.e. P-2(T), he was recommended for extension. The applicant was down graded to P-2(P) on 30.1.11. **His screening board was conducted on 9.7.11 (annexure-P-1_ and that is how his name was added to the letter on 4.1.2-11 (annexure-P-4) at serial No. 33. since the extension of the applicant was to commence only in January 2012 and the screening board was conducted on 9.7.11, both these dates were beyond 1.4.11, therefore, the applicant should be governed by the revised policy of 20.9.201-. As such, he being P-2(P) is eligible for extension of service by two years."**

17. In the ibid case, the screening of the applicant in normal course would have been carried out in December 2009 whereas it was actually held on 9.7.2011. Under the 1998 policy, screening has to be held 24 months in advance and in that case the applicant as per existing term was to retire in December 2011 after completion of 26 years of service. The respondents could not explain the position and since both screening and the date of retirement fell after the 1.4.11 when the new policy came into effect, therefore, the Tribunal granted the benefit of extension. In the case before us, admittedly the applicant was screened on 2.10.2010 and he had been in P2 category since 1996. Even in re-categorization

board held on 3.6.11 effective from 28.5.11, he remained in the same low medical category. Therefore, facts are different. That apart, we find from a circular dt. 11.1.2011 annexed with the reply affidavit of the respondents at page 84, it has been clarified in para 3 as under:-

> " 3. It is amply clear from the policy letter quoted above that the date of new policy to be effective is from 01 Apr 2011 to screen individuals due for extension wef 01 Apr 2013. It is also amply clear that there is no provision for second screening."

18. Therefore, there cannot be any scope for further screening of the applicant after the date of issue of the policy of 20.9.10 since he was already screened on 02 Oct 2010.

19. Ld. adv. for the applicant has also referred to a decision dt 22.8.12 of this Bench in OA 92/2012 (Hav/Mt Asha Nndan –vs- UOI & Ors). However, we find that it was an interim order and not final order. Therefore, cannot be treated as a precedent.

20. So far as other prayer of the applicant for condonation of short fall of 28 days in order to be eligible to get MACP benefit after 24 years of service, it is stated by the respondents in para 10 of their counter affidavit that the "after deducting 12 day of NQS period, NCO was due for MACP-III (Nb Sub) with effect from 31 Oct 2012 and the same has been published vide Corps Pt II order No. 1/2683/0001/2012 dt. 31 Oct 2012. 28 days RI has not been deducted for grant of MACP III (Nb Sub) as mentioned in the paragraphs under reference. The same has been granted to the NCO as per IHQ of MoD, Army HQ Letter No. B/33513/ACP/AG/PS-2© dated 13 June 2011." In that view of the matter no further adjudication is required. The ld. adv. for the applicant has also not argued on this issue.

21. In view of our foregoing discussions, we find that the applicant has not been able to make out a case for our intervention in the impugned order of discharge. Accordingly, the OA stands dismissed on contest but without any order as to costs.

22. Let the original records be returned to the respondents on proper receipt.

23. Let a plain copy of the order duly countersigned by the Tribunal Officer be furnished to both parties on observance of due formalities.

(LT. GEN. K.P.D.SAMANTA)
MEMBER(ADMINISTRATIVE)

(JUSTICE R.N.RAY)
MEMBER (JUDICIAL)